No. 275

In the Supreme Court of the United States

OCTOBER TERM, 1951

UNITED STATES OF AMERICA EX REL. HUBERT JAEGELER, PETITIONER

v.

UGO CARUSI, COMMISSIONER OF IMMIGRATION AND NATURALIZATION AND CARL ZIMMERMAN, DISTRICT DIRECTOR FOR DISTRICT NO. 2, PHILADELPHIA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENTS

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UGO CARUSI, COMMISSIONER OF IMMIGRATION AND NATURALIZATION AND CARL ZIMMERMAN, DISTRICT DIRECTOR FOR DISTRICT NO. 2, PHILADELPHIA [1]

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The order of the District Court for the Eastern District of Pennsylvania, discharging the writ of habeas corpus (R. 35), was not accompanied by an

[1] Ugo Carusi has not been Commissioner of Immigration and Naturalization for some time, but Carl Zimmerman is still District Director for District No. 2 of the Immigration and Naturalization Service. Accordingly, there is no problem of abatement in this case.

opinion. The opinion of the Court of Appeals for the Third Circuit (R. 37) is reported at 187 F. 2d 912.

JURISDICTION

The judgment of the Court of Appeals was filed on April 2, 1951 (R. 43). On June 27, 1951, by order of Mr. Justice Black, the time for filing a petition for a writ of certiorari was extended to August 29, 1951 (R. 44). The petition for a writ of certiorari was filed on August 24, 1951, and was granted on November 5, 1951 (R. 45). The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

This controversy centers around an order of the Attorney General directing petitioner's removal to Germany as an alien enemy. The primary questions are

1. Whether petitioner has been deprived of his privilege of voluntary departure before removal, accorded him by the Alien Enemy Act of 1798, by the action of the State Department in notifying various allied and neutral countries, chiefly in the Western Hemisphere, that petitioner was a person deemed dangerous to hemisphere security.

2. Whether anything in the proceedings resulting in the order of removal deprived petitioner of due process of law.

3. Whether the termination of the state of declared war with Germany terminates the power to execute a removal order issued during the war and

delayed in its execution by habeas corpus proceedings.[2]

STATUTE, PROCLAMATION, AND REGULATIONS INVOLVED

The pertinent provisions of the Alien Enemy Act of 1798, R.S. 4067 *et seq.*, as amended, 40 Stat. 531, 50 U.S.C. 21 *et seq.*, are set out in Appendix A, *infra*, p. 37. Presidential Proclamation 2655, 10 Fed. Reg. 8947, and the Attorney General's regulations pursuant thereto, are set forth in Appendices B and C, respectively, *infra*, pp. 38, 41.

STATEMENT

Petitioner is a German national, resident in Philadelphia. On February 1, 1942, the Attorney General, acting under Presidential Proclamation No. 2526 (6 Fed. Reg. 6323), pursuant to the Alien Enemy Act of 1798, ordered him interned for the duration of the war. Under this order, petitioner was held during hostilities at various internment camps (R. 3-5).

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[2] A petition for certiorari, primarily raising the first question, which had been passed on by the courts below, was filed on August 24, 1951. On October 19, while the petition was pending, the Joint Resolution ending the war with Germany (P.L. 181, 82d Cong.), was approved by the President, who formally proclaimed the event on October 25. Proclamation No. 2950, 16 Fed. Reg. 10915. Thereafter, petitioner suggested that the decrees of the lower courts be vacated on the ground that the cause was moot. Respondent filed a supplemental memorandum addressed to the question thus raised as to the possible termination of the power to execute the 1946 removal order. This Court's order on November 5, granting certiorari, did not limit the issues. Accordingly, the questions raised by both original and supplemental petitions are considered in this brief.

On July 14, 1945, the President issued Proclamation No. 2655 (*infra*, p. 38), authorizing the Attorney General to remove those interned aliens whom the Attorney General deemed dangerous. Petitioner was afforded a hearing before a Repatriation Board, and on May 3, 1946, on the recommendation of this Board, the Attorney General, acting under this Proclamation, directed petitioner's removal to Germany (R. 5). Petitioner remained in custody until April 15, 1947, at which time he was given a thirty-day parole, pursuant to the Attorney General's regulations, to permit him to settle his affairs and leave the country voluntarily (R. 5, 10, 14).

Petitioner returned to Philadelphia, and there, on May 15, 1947, while on parole, obtained a writ of habeas corpus, which is the subject of this case. His application for the writ was based chiefly on the contention that he had been deprived of the kind of a hearing to which he believed himself entitled (R. 3-9). Respondent's return to the writ admitted most of the material facts and contended that they constituted no basis for relief (R. 10-14).[3]

Petitioner then filed a traverse to the return, alleging that the respondents had effectively de-

[3] The return to the writ raised the question whether the court had jurisdiction to issue a writ of habeas corpus for the production of the body of a relator who was free on parole, but the district court's resolution of this issue in petitioner's favor was not challenged in the court below. Its correctness, however, is questionable. See the Government's Memorandum with Respect to Mootness, *Ludecke* v. *Watkins*, No. 723, October Term, 1947.

prived him of his opportunity to depart voluntarily to a country of his choice. This result, he alleged, was brought about by the action of the State Department in circularizing all the Western Hemisphere nations and certain European countries with a so-called "blacklist" containing the names of 417 dangerous enemy aliens, among whom petitioner was included. This "blacklist", petitioner contended, had the practical effect of inducing the circularized nations to deny him visas (R. 15-17).

After argument on these pleadings, the district court ordered a hearing on the factual issue of whether the "blacklist" had the alleged effect (R. 18-19). Various pre-hearing procedural steps ensued, including an attempt by the petitioner to take the deposition of the Secretary of State. The respondents opposed the taking of the deposition, submitting instead affidavits of State Department personnel which set forth the circumstances surrounding the circulation of the "blacklist". The respondents also sought to have the writ discharged, on the ground that the facts as alleged by relator and set forth in the affidavits did not constitute a basis for relief (R. 19-28). The district court accepted the affidavits in lieu of the deposition, but refused to dismiss the writ (R. 33).

The matter remained under advisement until 1950. Meanwhile, in a number of cases dealing with the "blacklist" question, the Court of Appeals for the Second Circuit held that the "blacklisted"

aliens had no ground for relief, and this Court denied certiorari. Thereupon, the district court ordered a reargument and, on October 9, 1950, discharged the writ (R. 35). The court below affirmed on April 2, 1951.

SUMMARY OF ARGUMENT

I

A. Petitioner in this case was afforded the privilege that the statute gives an enemy alien of departing voluntarily. The State Department's action in circulating a "blacklist" to the American republics and to some Western European governments did not deprive him of this opportunity. The list was circulated in accordance with the recommendations of various Inter-American Conferences, for the purpose of notifying the governments involved of the identity of dangerous aliens, in the interests of hemisphere defense. This defensive purpose is thoroughly consonant with the purpose of the Alien Enemy Act, which was to protect this country from the danger of subversion by enemy aliens.

B. In any event, the statute requires no more than an opportunity for the alien to return to his country of origin; and petitioner was given more than this. The purpose of the law in granting the privilege of voluntary departure was merely to permit the alien to gather his property and to leave without the indignity of physical restraint. In these respects, the statute is more liberal to the

alien than is the common law. For petitioner, it follows that the privilege means no more than the privilege of returning freely to Germany, the country of his nationality.

C. Furthermore, there were several nations to which the "blacklist" was not transmitted and to which petitioner did not even apply. He can hardly complain that he is being deprived of his statutory right to depart voluntarily when he did not exhaust the possibilities in 1947 (when the removal order was issued) and has apparently made no real effort since 1947 to secure permission to enter another country.

II

Nothing in petitioner's hearing before the Repatriation Board constituted a denial of due process. An enemy alien has no right to a hearing, and he may not complain of any hearing which is given him as a matter of grace. *Ludecke* v. *Watkins*, 335 U.S. 160.

III

In our view, the termination of the war has not terminated the government's power to execute the removal order validly made during the war in petitioner's case. Generally, the law has been in the process of effecting a reversal of the common law policy that liabilities under a statute are remitted by the repeal or expiration of the statute. The general saving statute, 1 U.S.C., Supp. IV,

109, exemplifies the new policy by providing for the preservation of liabilities and forfeitures after repeal of a statute or the expiration of a temporary statute.

The Alien Enemy Act is a temporary statute within the meaning of the general saving clause. Also, the liability of an alien to removal appears to be a "liability" within the meaning of that clause which has always been given a broad interpretation. The Alien Enemy Act itself speaks of the alien's "liability" to removal. Moreover, the removal order can be considered a "forfeiture" of the petitioner's right to remain in this country.

Even if the case is thought not within the express terms of the saving clause, it seems to fall within the general policy which that clause attempted to write into the law, a policy which is further exemplified in cases holding that the termination of executive or administrative action under a subsisting statute does not remit liabilities created while the executive or administrative action was in effect.

This principle, exemplified by the saving clause and by these cases, is based on the desire to prevent discrimination in the application of legislation. This purpose particularly calls for application of the principle here where petitioner has succeeded in avoiding removal by four and one-half years of habeas corpus litigation.

ARGUMENT

Introduction

The Alien Enemy Act of 1798 gives the President power in time of war to provide summarily for the internment and removal of any enemy alien above the age of fourteen years. In July 1945, after the surrender of Germany, the President exercised this ancient power by proclaiming that the Attorney General should be authorized to remove any of the then interned aliens whom he deemed dangerous. The Attorney General promulgated regulations establishing a regular procedure; and, under these regulations, some 174 Germans were ordered removed.[4]

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[4] Of the total of more than one million German, Italian and Japanese alien enemies in this country at the outset of World War II, approximately 13,500 were apprehended on Presidential warrant. No more than 4,132 alien enemies were ever interned at any one time and, when Germany surrendered, approximately 2,060 remained interned. See *Annual Reports of the Attorney General* (1942), p. 219; (1943), pp. 4-5, 317; (1944), pp. 355-359; (1945), p. 374. After V.E. day, boards, established to consider further internment and repatriation, continually considered and reconsidered the cases and, by November, 1947, there remained only 174 German alien enemies interned and subject to removal orders. As of that date, 24 German alien enemies had actually been removed and four had voluntarily departed, three to South America. No action was taken to execute removal orders at that time because of the pendency of litigation, principally mass litigations, and the possible applicability of Rule 45 of the Rules of this Court. See Respondents' Memorandum in Opposition to Petitioners' Application for a Stay in *Ahrens* v. *Clark*, No. 446, October Term, 1947. After this Court's decision in *Ludecke* v. *Watkins*, 335 U.S. 160, a final general administrative review took place, as the result of which 63 German alien enemies were released, 58 were removed, 11 departed voluntarily to Argentina, and one was paroled because of

Many of these aliens sought judicial review of their removal orders on various grounds; and the available bases of objection came to be quite thoroughly canvassed by the courts of appeals. *E.g. Citizens Protective League* v. *Clark*, 155 F. 2d 290 (C.A.D.C.), certiorari denied, 329 U.S. 787; *United States ex rel. Hack* v. *Clark*, 159 F. 2d 552 (C.A. 7); *United States ex rel. Schlueter* v. *Watkins*, 158 F. 2d 853 (C.A. 2); *United States ex rel. Schwarzkopf* v. *Uhl*, 137 F. 2d 898 (C.A. 2). After this Court's decision in *Ludecke* v. *Watkins*, 335 U.S. 160—holding that the statute gave the President plenary power, not subject to judicial review; that the President's delegation of this power to the Attorney General, under Proclamation 2655, was valid; that the power extended at least until the

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physical condition. Most of the remainder, 41 in number, of the 174 German aliens originally ordered removed, were attacking prior decrees of denaturalization. The contentions raised in these joint and several litigations, mostly in the District Court for the Southern District of New York, were similar to those before this Court in *Klapprott* v. *United States*, 335 U.S. 601, *Baumgartner* v. *United States*, 322 U.S. 665, and *Knauer* v. *United States*, 328 U.S. 654. Judicial stays were issued in these denaturalization cases. Finally, judicial stays against removal were issued as to about 15 German alien enemies, some of whom were also involved in the denaturalization suits, who litigated the "blacklist" question in the *Hoehn*, *Aigner* and *Dorfler* cases, *infra*, p. 11. Seven of these were removed in June and July, 1949.

As of the present time, 13 of the 41 German alien enemies, mentioned above, have been administratively released; six more have departed voluntarily to the Argentine; eight have been removed to Germany; six have been judicially released; and eight (including petitioner) are still subject to removal orders. All were administratively paroled during the summer of 1948.

end of the declared war; and that the statute so interpreted was constitutional—the possible grounds of objection were greatly narrowed.

This is the last German alien's case still remaining in the courts.[5] Petitioner has based his attack on the removal order in part on grounds which *Ludecke* v. *Watkins* should finally have laid to rest, and in part on a different ground, which *Ludecke* did not reach, but which has been considered and rejected several times. *United States ex rel. Dorfler* v. *Watkins*, 171 F. 2d 431 (C.A. 2), certiorari denied, 337 U.S. 914; *United States ex rel. Hoehn* v. *Shaughnessy*, 175 F. 2d 116 (C.A. 2), certiorari denied, 338 U.S. 872; *United States ex rel. Aigner* v. *Shaughnessy*, 175 F. 2d 211 (C.A. 2). The statute requires, as a condition precedent to removal, that the alien enemy be given an opportunity to depart voluntarily. Petitioner does not dispute that he was allowed thirty days, pursuant to the regulations, in which to leave voluntarily, nor does he contend that the thirty-day period provided by the regulations is less than reasonable; but he urges that the Government has reduced the opportunity to an empty gesture by its action in notifying the foreign offices of many of the allied and neutral countries of the Western Hemisphere and Western Europe that he was a dangerous alien, thus inducing these countries to deny him entry.

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[5] No suits are now pending as to the seven others subject to removal orders (fn. 4, *supra*).

From this, he appears to conclude that he is entitled to be released.[6] We believe (1) that the statute cannot be read as forbidding the Government to take circularizing action like that alleged here, and (2) that, in any case, the full requirements of the statute have been met by giving petitioner an opportunity to return freely to Germany, which he had, so that any additional opportunity he had to go elsewhere, which he also had, was gratuitous.

If the case stopped here, it would present no great difficulty. But the passage of time has presented petitioner with a perhaps not unhoped-for further basis for argument. In *Ludecke* v. *Watkins*, there was elaborate discussion of the question whether the statutory power to remove was limited to the period of actual fighting. The Court concluded that the power was not so limited; but it appears to have been generally conceded on all sides that the power to order removal would lapse on the formal termination of war.[7] The Court is now squarely faced with the question whether a

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[6] Petitioner's argument amounts to the contention that he is not a person removable under the terms of the statute; this contention is open to him on habeas corpus. See *Johnson* v. *Eisentrager*, 339 U.S. 763, 775; *Ludecke* v. *Watkins*, 335 U.S. 160.

[7] As pointed out in respondents' supplemental memorandum herein, the Government, in its main brief in *Ahrens* v. *Clark*, No. 446, October Term, 1947, at pp. 17-18, fn. 14, indicated that formal termination of war might raise a problem as to the power to execute specific removal orders, action on which was deferred or prevented during the war. See *infra*, pp. 34-35.

removal order validly made during the war can be executed after the war has been so ended.

On this issue, our position is that the order against petitioner may now be enforced. There is a clear policy running through the law, expressed both in statutes and in case law, to preserve liabilities like petitioner's liability to conform to the removal order. Particularly in this case, where the delay has been occasioned by litigation, this policy of permitting the execution of valid orders should be followed.

I

The Court Below Correctly Held That the State Department "Blacklist" Did Not Deprive Petitioner of the Statutory Privilege of Departing Voluntarily

The question presented by petitioner's attack on the State Department's "blacklist" is one of statutory construction. The Alien Enemy Act authorizes the President "to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom." In narrow focus, the question is whether petitioner has "refused" or "neglected" to depart. The court below assumed that the Act precludes the Attorney General from removing an alien until he "neglects" or "refuses" to depart voluntarily, after a reasonable opportunity to do so (R. 42). See also *United States ex rel. Von Heymann* v. *Watkins*, 159 F. 2d 650 (C.A. 2). We make the same assumption.

Since the writ was dismissed without a hearing on the facts, we shall not controvert the truth of the allegation that the so-called "blacklist" had some effect in inducing certain countries to exclude petitioner. This assumption, however, can be true only as to the American and Western European countries to which the list was circulated. It seems clear from the record that such Western European countries as Norway, Denmark, the Low Countries, and Italy, in addition to the Middle East, Asia and Oceania, and the Iron Curtain countries were not circularized; as to these we must presume that any refusal to admit petitioner was for reasons of their own, uninfluenced by any action of this Government.[8] Germany was of course not circularized, and there can be no question of petitioner's freedom to go there. We submit, moreover, that the action of circulating the "blacklist" in the circumstances of this case could not constitute a violation of the statutory privilege of departure, even if the circularization had been universal.

A. *The List Was Circulated As a Measure of Defense and Was Thus Consonant With the Purposes of the Alien Enemy Act.*

Read in the light of the clear intent of the whole statute, no provision of the Alien Enemy Act can

[8] Petitioner's list of countries, to the consulates of which he says he applied in 1947 (Pet. Br. 8-11), indiscriminately includes both the countries circularized by the State Department and many others.

be construed to forbid the Government's action in this case. On the contrary, this action—purely protective in nature and purpose—complements, rather than frustrates, the purpose of the Alien Enemy Act.

Throughout the war, the United States acted in close cooperation with the Latin American nations on the problem of preventing subversive activities by enemy nationals in the Western Hemisphere. On January 28, 1942, soon after Pearl Harbor, the Rio de Janeiro Conference of American Foreign Ministers adopted a resolution recommending measures for protection against subversive aliens. One of the recommended measures was the immediate communication among the governments of the American republics of any information that might come to hand about suspect dangerous aliens. Resolution XVII, Final Act of Third Conference of Foreign Ministers of American Republics, January 28, 1942, 6 Dep't State Bull. 128. This was the origin of the suggestion for publicizing a list of dangerous aliens.[9]

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[9] The same resolution also provided for the establishment of the Emergency Advisory Committee for Political Defense, to coordinate measures for the control of subversion. This committee, elected by the governing board of the Pan American Union, was set up at Montevideo. It adopted a resolution providing for the internment of some enemy aliens and the repatriation of others from all the Latin American countries. The United States made arrangements, through the regular international channels for exchanging belligerent nationals, to repatriate enemy aliens from the Latin American countries, as well as aliens residing here. Under this program, some 4707 German, Italian, and Japanese nationals were

This suggestion was amplified in Resolution VII of the Inter-American Conference on the Problems of War and Peace at Mexico City, February 23, 1945, 12 Dep't State Bull. 344. This resolution provided, among other things, for the taking of measures to prevent deported aliens from residing elsewhere in the Western Hemisphere. It was pursuant to this resolution that the State Department circulated to the American republics and Canada the list of 417 particularly dangerous alien enemies, requesting assurances that, if removed from this country, these enemies would not be received elsewhere in this hemisphere.

After the *Von Heyman* case (*United States ex rel. Von Heyman* v. *Watkins*, 159 F. 2d 650 (C.A. 2)) and certain district court cases had held that enemy aliens must be permitted to depart freely, the State Department withdrew its request for assurances that the listed aliens would be excluded, making clear that, while it still regarded the aliens as dangerous, the Department did not wish to interfere with any other country that might care to receive them (R. 20-26). At the same time, the same list of 417 aliens was sent to the governments of England, France, Sweden, Switzerland, Spain,

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brought to the United States from South and Central America; 2584 of these were voluntarily repatriated and 2118 were interned here. 11 Dep't State Bull. 147. After the end of hostilities, the President provided, under the Alien Enemy Act, for the removal to their native countries of those who still remained and who were unwilling to leave voluntarily. Proclamation No. 2662, 10 Fed. Reg. 11635; Proclamation No. 2685, 11 Fed. Reg. 4079.

and Portugal, with the evident purpose of extending the protective benefits of this information to these leading allied and neutral centers. No assurances of non-admission were asked of these countries.

The protective nature of these measures, and their clear purpose—the solidification among the nations opposing the Axis of a coordinated defense against wartime and postwar propaganda, espionage, sabotage, and other subversive activity—are plain on the face of the resolutions recommending them. The protective aspect of the Alien Enemy Act—the need to neutralize potential subversives—has always been recognized as its main, indeed its only purpose. See especially, Mr. Justice Black, dissenting in *Ludecke* v. *Watkins,* 335 U.S. 160, 176-177; Annals of Congress, 5th Cong., 2d. Sess. 1575, 1790-1. War having become a world-wide event, the extension of the same protective measures on a world-wide scale is only a common sense extension, in the light of modern conditions, of the principles of the Act. Certainly, the Act should not be construed to prohibit it.

We show in Section B, *infra,* pp. 18-21, that the statutory provision for voluntary departure interdicts no more than physical restraint of the alien desiring voluntarily to return to his country of origin. But, even if the Act meant more, if it forbade gratuitous blacklisting, nevertheless we submit that the self-defensive nature of the measures here in question would justify them. The Act

does not compel the Government to stand quietly by while an alien whose presence has been found to be dangerous to our security enters the country of an ally, where in all probability his presence would be equally dangerous to the security of our cause. So long as he is free to go to a country whose principles are compatible with his allegiance, and where his presence would not be harmful to our security—even if it be only Germany—the Act's condition is satisfied.

B. *The "Blacklist" Was Not Circularized to Germany and the Alien Enemy Act Requires Only That Petitioner Be Left Free to Go to the Country of His Nationality.*

The history and background of the Alien Enemy Act show that the departure provision means no more than that the enemy must be given the chance to depart voluntarily for the country of his nationality before he is forcibly removed.

The primary object of the departure privilege was to provide the alien time to gather his belongings and return home with his property, free of the indignity of being thrown out. At the time of the Act's passage in 1798, the United States was engaged in an undeclared war with France. The Act was submitted as a device for protection from subversive French aliens. Many of the French aliens, indeed many aliens of all nationalities, were either immigrants or merchants and America was a commercial nation in a commercial world. The

Fifth Congress wanted protection from espionage, but it did not want to discourage foreign immigrants and merchants from coming to this country, for trading was one of the main sources of livelihood. Congress therefore was careful to take steps to mitigate the traditional treatment of enemy aliens, especially with respect to their property.[10] See Annals of Congress, 5th Cong., 2d Sess. 1574, 1579, 1794-1796, 2000-2001. Much of the legislative emphasis was on property. Thus, the original form of the bill contained a provision for retaliation against the persons and the property of enemy aliens for severities inflicted on Americans by enemy governments. This was rejected by the House, objection being raised both to retaliation and to confiscation. Annals of Congress, 5th Cong., 2d Sess. 1786. More significantly, the second section of the Act has from the beginning consisted of careful provisions allowing aliens who become liable for removal a reasonable time to gather and remove their goods and effects. R.S. 4068, 50 U.S.C. 22, Appendix A, *infra*, p. 37.

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[10] At common law "alien enemies have no rights, no privileges, unless by the King's special favor, during the time of war." 1 Blackstone, *Commentaries* (Lewis ed., 1900) *372-373. Aliens, friends or enemies, could not own the beneficial interest in realty. *Ibid.* In time of war alien enemies' personalty and choses in action were subject to seizure. *Attorney General* v. *Weeden & Shales*, Park. 267, 145 Eng. Rep. 776 (1699); cf. *Antoine* v. *Morshead*, 6 Taunt. 237, 128 Eng. Rep. 1025 (1815); see, generally, *Johnson* v. *Eisentrager*, 339 U.S. 763, 768-9, 771 *ff.*, and *Porter* v. *Freudenberg*, [1915] 1 K.B. 857 (C.A.).

In view of this Congressional solicitude for the full recovery by the aliens of their goods and effects, it seems to us that the most reasonable reading of the voluntary departure provisions of Section 21 (the first section of the 1798 Act), taking them together with the reasonable-time provisions of Section 22 (the second section), is that their purpose was only to give the alien time to gather his effects. To this may be added a desire not to subject him to the indignity of being put bodily on board ship. There is nothing to suggest that Congress ever contemplated that an alien who was released to get his goods together and to preserve his dignity free from physical restraint would go anywhere but where the President planned to deport him, *i.e.*, to the country of his nationality.

This specific legislative background aside, the same conclusion is suggested by the general purpose of the Act. Petitioner assumes that if he can find no country but Germany which will accept him he is relieved of his liability to removal. But his dangerousness, which is the cause of the removal order, is not reduced because he cannot find some country to receive him. The grotesque result implied by petitioner's argument is that the least desirable or most dangerous alien enemies would be forced upon us. In the light of the Act's protective purpose, it seems clear to us that, even if petitioner had a justifiable complaint that the Government were taking an ignoble part in circulating the "blacklist," and even if no nation other than Ger-

many would take him, he would not be released from his obligation to depart, and hence from his liability to removal.

C. *In Any Case, the List Was Not Circulated to Many Countries to Which Petitioner Was Free to Apply But Did Not.*

In *United States ex rel. Dorfler* v. *Watkins*, 171 F. 2d 431 (C.A. 2), certiorari denied, 337 U.S. 914, the Court of Appeals said: "The privilege of voluntary departure does not imply that the alien must be able to go to the country of his choice. So long as there is any foreign country to which he could have gone, his failure to go there is a 'neglect' or 'refusal' to depart voluntarily." 171 F. 2d at 432. See also *United States ex rel. Hoehn* v. *Shaughnessy*, 175 F. 2d 116 (C.A. 2), certiorari denied, 338 U.S. 872; *United States ex rel. Aigner* v. *Shaughnessy*, 175 F. 2d 211 (C.A. 2). We think that this statement, although somewhat broader than the background and history of the statute require (see *supra*, pp. 18-21), declares the maximum privilege to which an alien enemy can aspire. Certainly, if some country is available to which he can remove himself, he "neglects" and "refuses" to depart our shores when he fails to leave for that country.

In this case, petitioner has not shown, and cannot show, that no country on earth would receive him. While it must be assumed for purposes of review that the "blacklist" had some appreciable

effect where circulated, it is clear, as we have indicated, *supra,* p. 14, that its effect was limited to those places. It was sent only to certain countries and can have had no effect on the decisions of other nations to reject petitioner's alleged applications for admission. Moreover, petitioner did not even apply to several countries, such as Austria, China, India, and Yugoslavia (see Pet. Br. 8-12).

Finally, in all fairness, it must be pointed out that petitioner has now had more than four and one-half years, since his parole in April 1947, in which to find a place to go. All this time he has been free. The Government has made no attempt to resume custody of his person, being deterred until October 1950 by the outstanding writ of habeas corpus, and thereafter by the possible applicability of Rule 45 of the Rules of this Court (which question is discussed below, at pp. 34-35). Whatever may have been the effectiveness of the "blacklist" in 1947, surely it has diminished by now. Other removed German aliens have found their way into Argentina and other places where it is common knowledge that the word of this Government is no longer heard with the same favor as four years ago.[11] The President fixed thirty days

[11] As already indicated, 17 German alien enemies voluntarily departed to Argentina after this Court's decision in the *Ludecke* case in 1948. Earlier, 3 others had also voluntarily departed to South America, 2 to Venezuela and 1 to Bolivia. Fn. 4, *supra,* p. 9.

as a reasonable time for an alien's voluntary departure, and this has been held to be reasonable. Proclamation No. 2685, 11 Fed. Reg. 4079; see *United States ex rel. Hoehn* v. *Shaughnessy*, 175 F. 2d 116, 117 (C.A. 2). If petitioner has been unable in four and one-half years to find a place to receive him, "blacklist" or not, it begins to appear that his efforts have not been unduly vigorous; not only the statute but the ordinary equities are against him. Within the meaning of the Act, petitioner has "neglected" to depart, and hence may be removed.

II

Nothing in the Proceedings Which Resulted in the Removal Order Constituted a Denial of Due Process

Petitioner also contends that the hearing before the Repatriation Board, at the time it was determined to remove him, failed to conform to the requirements of due process. It was settled by *Ludecke* v. *Watkins*, 335 U.S. 160, that removal of an enemy alien may be effected without a hearing. The statute so provides, and, as so read, does not constitute a denial of due process. *Ludecke* v. *Watkins*, 335 U.S. U.S. 160; see also *Johnson* v. *Eisentrager*, 339 U.S. 763, 775. Petitioner's reliance on cases requiring a hearing in the deportation of alien friends is obviously misplaced.

We recognize that there may be thought to be, at least conceptually, a distinction to the effect

that, while no hearing is required, any hearing which is given gratuitously must conform to the requirements of fairness. But the courts have refused to make the distinction.[12] Moreover, there is nothing in the record to show the proceedings before the Repatriation Board. The petition for the writ of habeas corpus shows that petitioner was notified of his hearing and that the hearing was held, but no more (R. 5). Beyond this, we may perhaps be indulged in the presumption that the proceedings in this case were substantially similar to those in the cases which have gone before. Cf. *United States ex rel. Schlueter* v. *Watkins*, 67 F. Supp. 556 (S.D.N.Y.), affirmed, 158 F. 2d 853 (C.A. 2).[13]

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[12] "A war power of the President not subject to judicial review is not transmuted into a judicially reviewable action because the President chooses to have that power exercised within narrower limits than Congress authorized." *Ludecke* v. *Watkins*, 335 U.S. 160, 166. Accord, *United States ex rel. Schlueter* v. *Watkins*, 67 F. Supp. 556 (S.D. N.Y.), affirmed, 158 F. 2d 853 (C.A. 2); see Mr. Justice Douglas, dissenting in *Ludecke* v. *Watkins*, 335 U.S. 160, 184 n. 1.

[13] We regard as frivolous petitioner's contention that his removal violates the United Nations Charter. Nothing in the Charter affects the power to remove enemy aliens in time of war. Nor does anything in Resolution XXVI of the Emergency Advisory Committee on Political Defense help petitioner. This resolution established criteria for the State Department in determining which of the Latin American German aliens were dangerous; but this applied only to the Latin Americans, of whom petitioner is not one. Also, since petitioner is not entitled to review of the Attorney General's findings, he cannot in any event question whether the latter has conformed to the standards set out in the resolution.

III

The Termination of the War Did Not Terminate the Power to Execute a Removal Order Validly Issued During the War

The Alien Enemy Act provides that aliens are "liable" to removal by the President "whenever there is a declared war." *Infra*, p. 37. In *Ludecke* v. *Watkins*, 335 U.S. 160, the alien petitioner earnestly contended, despite the explicit reference to a declared war, that his liability to removal terminated when the fighting stopped, or at least when the danger of subversion had passed. This Court rejected that contention, pointing out that for the Court to determine when the "war" (as the term is used in the statute) came to an end would be to impinge upon a political function of Congress and the Executive. 335 U.S. at 168-169; see also *United States ex rel. Kessler* v. *Watkins*, 163 F. 2d 140, 142-143 (C.A. 2).

Congress has now made the political determination that the war is ended. P. L. 181, 82nd Cong., October 19, 1951.[14] It is clear that this, by the

[14] "*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: *Provided, however*, That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including

terms of the Alien Enemy Act, terminates the power of the President to order further removals, both directly and, as was the situation in World War II, through his delegate, the Attorney General. The question before the Court, however, is whether Congress' action in ending the war operates retroactively to prevent execution of a removal order valid when issued. The answer is not free from doubt, but we think it should be in the negative.

The problem is again one of statutory construction—a question of the meaning of the Alien Enemy Act.[15] There is language in earlier opinions which can be read as saying or implying that, re-

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accruals to or proceeds of any such property or interest, shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest."

[15] We think that no constitutional problem is involved. Congress clearly has the power, if it so chooses, to extend the Attorney General's authority to remove at least those aliens whom he has previously found, during the war, to be dangerous. Cf. *Mahler* v. *Eby*, 264 U.S. 32; *Fleming* v. *Mohawk Wrecking Co.*, 331 U.S. 111; *Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146; *McElrath* v. *United States*, 102 U.S. 426; *The Protector*, 12 Wall. 700; *Stewart* v. *Kahn*, 11 Wall. 493; *United States* v. *Anderson*, 9 Wall. 56. The question here is merely whether Congress actually has exercised the power. We recognize, of course, that the Constitution has been held to require a due process hearing for alien friends who are to be deported under the general deportation laws. *E.g.*, *Bridges* v. *Wixon*, 326 U.S. 135; *The Japanese Immigrant Case*, 189 U.S. 86; cf. *Mahler* v. *Eby*, 264 U.S. 32. But the question here is different; petitioner was an alien

gardless of the prior issuance of a valid removal order, the power of the President (and his delegates) actually to remove an alien enemy lasts only so long as a declared war is in existence and peace has not been formally proclaimed. See *Ludecke* v. *Watkins*, 335 U.S. 160, 166-170; *United States ex rel. Kessler* v. *Watkins*, 163 F. 2d 140, 142-143 (C.A. 2); *United States ex rel. Ludecke* v. *Watkins*, 163 F. 2d 143, 144 (C.A. 2). Whether or not these passages should bear this interpretation, it is plain that the issue was not raised in any of the prior cases and that it is squarely presented here for the first time.[16] We shall, therefore, consider it afresh.

A. There runs through the whole law a policy of preserving legal liabilities and obligations. This policy is expressed in the general saving statute, R. S. 13, as amended, 58 Stat. 118, 1 U.S.C., Supp. IV, 109, which preserves "penalties, forfeitures, and liabilities" created by repealed statutes and by temporary statutes which subsequently expire. It is also expressed in cases preserving liabilities, penalties, and forfeitures created by executive or administrative action, afterwards repealed or ex-

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enemy when the removal order was made and the Constitution required no hearing, *supra*, pp. 23-24. The fact that in October he automatically became an "alien friend" does not, in itself, entitle him to a due process rehearing on matters already concluded.

[16] In its brief and memorandum in *Ahrens* v. *Clark*, No. 446, Oct. Term, 1947, the Government pointed out that the problem would arise if litigation continued until peace was declared. See fn. 7, *supra*, p. 12.

pired, under statutes which continue to subsist. *United States* v. *Hark*, 320 U.S. 531; *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 331-333; *Rodgers* v. *United States*, 158 F. 2d 835 (C.A. 6), reversed on other grounds, 332 U.S. 371; cf. *Stillman* v. *United States*, 177 F. 2d 607, 619 (C.A. 9); see *Fleming* v. *Mohawk Wrecking Co.*, 331 U.S. 111, 116.

1. Consider first the general saving statute.[17] This was first enacted in 1871, for the purpose of reversing the common law rule that repeal of a statute remitted all liabilities incurred under it unless the repealing statute expressly saved them.[18] It changed the rule so that all liabilities are preserved unless expressly remitted.

In 1944, the statute was amended to its present

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[17] "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability. The expiration of a temporary statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the temporary statute shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

[18] Act of February 25, 1871, c. 71, 16 Stat. 431. For cases discussing the clause in its relationship to the common law rule, see, *e.g. Hertz* v. *Woodman*, 218 U.S. 205, 216; *Great Northern Ry. Co.* v. *United States*, 208 U.S. 452; *United States* v. *Reisinger*, 128 U.S. 398; cf. *Norris* v. *Crocker*, 13 How. 429; *The Irresistible*, 7 Wheat. 551; 1 Sutherland, *Statutory Construction* (3d ed.) § 2043, and cases cited.

form, extending the principle which it had previously applied in cases of repeals to cases where a temporary statute expired. Act of March 22, 1944, c. 123, 58 Stat. 118. This amendment was aimed at preserving liabilities under wartime statutes which were to expire whenever the war might end. See Sen. Rep. 734, 78th Cong., 2d Sess.

We submit, first, that the Alien Enemy Act is a temporary statute within the meaning of this general saving clause. The Alien Enemy Act does not expire with the end of the war; it is a continuing statute and the policy it expresses is continuous but its operative provisions take effect only in time of war. Neither its substantive provisions nor its meagre administrative apparatus impose any duties on anyone except "whenever there is a declared war."[19] Each time these provisions come into operation, the operation is temporary. Cf. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 331-333. The saving clause's inherent purpose of preventing discrimination among different persons affected by a particular statute seems as applicable to the Alien Enemy Act as to any statute which lives during one war and then expires. If the Act had created crimes and imposed criminal penalties, violations of the criminal

[19] For a compilation of statutes permanently in effect but operative only during time of war, see Report to the President by the Attorney General Concerning the Limitation, Suspension, or Termination of Emergency, National Defense and War Legislation 67-74 (1945).

provisions could undoubtedly be punished after the return of peace; non-criminal penalties, forfeitures, or liabilities should likewise be preserved.

If the Alien Enemy Act is, then, a temporary statute within the meaning of the general saving clause, we suggest that petitioner can be said to be subject to a "liability" to removal and a "forfeiture" of his right to remain, which the clause saves. The term "liability" in the saving clause has always been given a broad interpretation. It includes not only criminal liabilities and liabilities for money damages, but also liabilites to take specific action. It covers all specific legal obligations and duties. Cf. *Hertz* v. *Woodman*, 218 U.S. 205 (liability for a tax); *Eastern Coal Corp.* v. *NLRB*, 176 F. 2d 131, 136 (C.A. 4) (liability to reinstate discharged employees); and see generally *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 119; *Herman* v. *Woods*, 175 F. 2d 781, 786 (E.C.A.); *United States* v. *Carter*, 171 F. 2d 530 (C.A. 5); *NLRB* v. *National Garment Co.*, 166 F. 2d 233, 237 (C.A. 8), and cases cited. Once the removal order was issued against petitioner, he was under a specific legal command to depart and was subject to a definitive liability to removal if he neglected or refused to leave. That is the type of "liability" that the general saving clause seems designed to cover. Moreover, the removal order can also be considered a definite "forfeiture" of peti-

tioner's right to remain in this country which survives the lapse of the Act.

If a general deportation statute should be repealed, leaving outstanding valid deportation orders which had not yet been executed, it would seem that the general saving clause would preserve the orders in effect, unless Congress clearly indicated otherwise.[20] The alien would be subject to a specific "liability", and a "forfeiture" would have been declared. Alien enemy removal orders stand on the same footing.

2. Apart from the express terms of the general saving clause there is a broader principle of which the saving statute is a particular manifestation.[21] For instance, in *United States* v. *Curtiss-Wright*

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[20] This is to be distinguished from a mere change in the deportation laws pending judicial review or appeal. See fn. 26, *infra*, p. 36.

[21] "We quite agree that vague arguments as to the spirit of a constitution or statute have little worth. We recognize that courts have been disinclined to extend statutes modifying the common law beyond the direct operation of the words used, and that at times this disinclination has been carried very far. But it seems to us that there may be statutes that need a different treatment. A statute may indicate or require as its justification a change in the policy of the law, although it expresses that change only in the specific cases most likely to occur to the mind. The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for courts to say: We see what you are driving at, but you have not said it, and therefore we shall go on as before." Holmes, J. in *Johnson* v. *United States*, 163 Fed. 30, 31-32 (C.A. 1). Cf. *Keifer & Keifer* v. *R. F. C.*, 306 U.S. 381, 389-392.

Export Corp., 299 U.S. 304, 331-3, this Court held that, under a statute which gave the President power to prevent exports to the belligerents in the Chaco war if such an embargo might contribute to peace, the President's subsequent proclamation revoking his earlier proclamation of an embargo did not remit liabilities incurred while the proclamation was in effect. Cf. *United States* v. *Hark*, 320 U.S. 531; *United States* v. *Powers*, 307 U.S. 214; *Rodgers* v. *United States*, 158 F. 2d 835 (C.A. 6), reversed on other grounds, 332 U.S. 371; *Stillman* v. *United States*, 177 F. 2d 607, 619 (C.A. 9); *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U.S. 111, 116.

These cases are analogous to the present case. Their rationale is that the liability is founded on the statute, and the executive action under the statute enforces and gives form to the liability. Hence, so long as the statute continues to exist, the liability subsists. Even though the executive action to implement the statute "cease[s] to be a rule for the future" it does "not cease to be the law for the antecedent period of time." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 332. In the instant case, the liability to removal is grounded in the Alien Enemy Act and the Act continues to subsist. Thus, the executive action under it—the President's removal proclamation and the Attorney General's order—although they have "ceased to be the law for the future," are

still the law "for the antecedent period of time."[22]

These cases have been regarded as an exception to the former common law rule. But they are in harmony with the policy of the general saving clause.[23] We think, therefore, that these cases, taken together with the general saving clause, give expression to a general principle which can properly be applied to the present case. This principle rests on the sound consideration that a contrary rule would result in discrimination, a consideration plainly applicable to the present case. Unless this Court affirms the judgment below, petitioner will have been able, merely by reason of the extreme length of the present proceedings, to escape removal, while other less fortunate aliens, whose proceedings began at the same time, have long since been removed. See *infra*, pp. 34-35.

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[22] From another point of view, the termination of the war is simply the occurrence of the contingency on which the removal provisions of the Alien Enemy Act cease to have prospective operation. The occurrence of this circumstance would not affect the validity of the previously-issued order. Cf. *Ex parte Kaprielian*, 188 Fed. 694 (D. Mass.) (alien woman held deportable, despite marriage to American citizen after issuance of the deportation order, although the statute gave women who married citizens eligibility to citizenship).

[23] This policy is also reflected in the rule that the sentence provisions of the new Criminal Code do not supersede the provisions of the repealed statutes in prosecutions brought before the enactment of the new code. *Hiatt* v. *Hilliard*, 180 F. 2d 453 (C.A. 5); *United States* v. *Kirby*, 176 F. 2d 101, 104 (C.A. 2); *Lovely* v. *United States*, 175 F. 2d 312, 316-318 (C.A. 4), certiorari denied, 338 U.S. 834. The one exception to the principle is that liabilities under a statute rendered invalid by repeal of the constitutional provision on which it rests are not saved from extinction. *United States* v. *Chambers*, 291 U.S. 217.

B. Even if all unexecuted removal orders which were valid when issued do not survive the termination of the war with Germany, there is good reason for holding that this particular order does survive, because the order's execution was delayed for several years because of the habeas corpus proceedings brought by petitioner.

As indicated in the Statement, *supra*, pp. 4-5, petitioner was formally ordered removed in May 1946, and action to effect this order was taken in April 1947. Habeas corpus proceedings were filed in May 1947, and the writ was issued on May 15, 1947 (R. 1). The four and one-half years since that time have been taken up with petitioner's attempt, through habeas corpus, to prevent his removal. The matter was before the District Court until discharge of the writ in October 1950. Thereafter, during the appellate phases of the case, no attempt was made to remove petitioner because of the possible applicability of Rule 45 of the rules of this Court—"Custody of Prisoners Pending a Review of Proceedings in Habeas Corpus."[24]

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[24] "1. Pending review of a decision refusing a writ of habeas corpus, the custody of the prisoner shall not be disturbed.

"2. Pending review of a decision discharging a writ of habeas corpus after it has been issued, the prisoner may be remanded to the custody from which he was taken by the writ, or detained in other appropriate custody, or enlarged upon recognizance with surety, as to the court or judge rendering the decision may appear fitting in the circumstances of the particular case.

"3. Pending review of a decision discharging a prisoner on habeas corpus, he shall be enlarged upon recognizance, with surety, for his appearance to answer and abide by the judg-

See Respondents' Memorandum in Opposition to Petitioners' Application for a Stay, *Ahrens* v. *Clark*, No. 447, October Term, 1947, and fn. 7, *supra*, p. 12.

The delay in execution of the removal order is thus mainly attributable to petitioner. If petitioner had escaped from custody and remained a fugitive until the present time, it seems clear that the removal order could be executed upon his recapture. Similarly, in the present circumstances, there is particularly good ground for applying the general principles discussed above (*supra*, pp. 28-33), and for averting discrimination in the impact of the 1798 Act. Cf. *United States* v. *Powers*, 307 U. S. 214, 217.[25]

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ment in the appellate proceeding; and if in the opinion of the court or judge rendering the decision surety ought not to be required the personal recognizance of the prisoner shall suffice.

"4. The initial order respecting the custody or enlargement of the prisoner pending review, as also any recognizance taken, shall be deemed to cover not only the review in the intermediate appellate court but also the further possible review in this court; and only where special reasons therefor are shown to this court will it disturb that order, or make any independent order in that regard."

[25] We do not think that Congress intended a contrary result when it included in its Joint Resolution ending the war an express proviso for the extension of powers under the Trading with the Enemy Act. See fn. 14, *supra*, p. 25. The explanation for this is that Congress wished to continue the power to issue orders vesting alien property, while it desired to terminate, for the future, the power to issue alien enemy removal orders. But this, of course, does not reach the question whether an existing removal order is enforceable. See H. Rep. No. 706, 82d Cong., 1st Sess., 11, 12.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgment below should be affirmed.[26]

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JANUARY, 1952.

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[26] In the event that the Court should feel that the power to execute the removal order has terminated, the Court has power to require petitioner's release in the present proceeding. On review of habeas corpus proceedings, the appellate court does not merely review the propriety of the lower court's action as it was when taken but applies the law as it is at the time of review. *United States ex rel. Wiczynski* v. *Shaughnessy*, 185 F. 2d 347 (C.A. 2). If the Court vacates the judgment below, as is the procedure in moot cases, the petitioner will be left on parole from the respondents' custody. The proper procedure would appear to be to reverse the judgment and remand with orders to the district court to enter a judgment releasing the petitioner. Cf. *United States ex rel. Pizzuto* v. *Shaughnessy*, 184 F. 2d 666 (C.A. 2).

APPENDIX A

The Alien Enemy Act of 1798, R. S. 4067, as amended, 50 U. S. C. 21, provides:

§ 21. Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

§ 22. When an alien who becomes liable as an enemy, in the manner prescribed in the preceding section, is not chargeable with actual hostility, or other crime against the public

safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject, and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality.

APPENDIX B

Proclamation 2655, issued by President Truman on July 14, 1945, provides (10 Fed. Reg. 8947):

A PROCLAMATION

Whereas section 4067 of the Revised Statutes of the United States (50 U.S.C. 21) provides:

"'Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized, in any such event, by his proclamation thereof, or

other public act, to direct the conduct to be observed, on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety;"

Whereas sections 4068, 4069, and 4070 of the Revised Statutes of the United States (50 U.S.C. 22, 23, 24) make further provision relative to alien enemies;

Whereas the Congress by joint resolutions approved by the President on December 8 and 11, 1941, and June 5, 1942, declared the existence of a state of war between the United States and the Governments of Japan, Germany, Italy, Bulgaria, Hungary, and Rumania;

Whereas by Proclamation No. 2525 of December 7, 1941, Proclamations Nos. 2526 and 2527 of December 8, 1941, Proclamation No. 2533 of December 29, 1941, Proclamation No. 2537 of January 14, 1942, and Proclamation No. 2563 of July 17, 1942, the President prescribed and proclaimed certain regulations governing the conduct of alien enemies; and

Whereas I find it necessary in the interest of national defense and public safety to prescribe regulations additional and supplemental to such regulations:

Now, therefore, I, Harry S. Truman, President of the United States of America, acting under and by virtue of the authority vested in me by the Constitution of the United States and the aforesaid sections of the Revised Statutes of the United States, do hereby prescribe and proclaim the following regulations, additional and supplemental to those prescribed by the aforesaid proclamations:

All alien enemies now or hereafter interned within the continental limits of the United States pursuant to the aforesaid proclamations of the President of the United States who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 14th day of July in the year of our Lord nineteen hundred and forty-five and of the Independence of the United States of America the one hundred and seventieth.

By the President:

[SEAL.] HARRY S. TRUMAN.

JAMES F. BYRNES,
Secretary of State.

APPENDIX C

Regulations of the Attorney General (10 Fed. Reg. 12189), pursuant to Presidential Proclamation 2655:

TITLE 28—JUDICIAL ADMINISTRATION

CHAPTER I—DEPARTMENT OF JUSTICE

PART 30—Travel and Other Conduct of Aliens of Enemy Nationalities

REMOVAL OF ALIEN ENEMIES FROM THE U. S.

Sec.

30.71 Removal from the United States of alien enemies.
30.72 Order of the Attorney General.
30.73 Service of removal order on alien enemy.
30.74 Thirty-day period for voluntary departure.
30.75 Involuntary removal from the United States.

Authority: §§ 30.71 to 30.75, inclusive, issued under R. S. 4067; 50 U.S.C. 21.

§ 30.71. *Removal from the United States of alien enemies.*—The Proclamation of the President of the United States, No. 2655 (10 F.R. 8947), dated July 14, 1945, provided in part:

"All alien enemies * * * interned within * * * the United States * * * who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the

principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Attorney General may prescribe."

§ 30.72. *Order of the Attorney General.*—When a determination has been made by the Attorney General that an interned alien enemy is deemed to be dangerous to the public peace and safety of the United States because he has adhered to an enemy government or to the principles of government thereof, an order will be signed by the Attorney General directing that the said alien enemy depart from the United States within thirty (30) days after notification of the order and that, if he fails or neglects so to depart, the Commissioner of Immigration and Naturalization is to provide for the alien enemy's removal to the territory of the country of which he is a native, citizen, denizen, or subject.

§ 30.73 *Service of removal order on alien enemy.*—A copy of the Attorney General's order of removal will be delivered to the alien enemy at the place where he is interned.

§ 30.74 *Thirty-day period for voluntary departure.*—An alien enemy who is the subject of a removal order shall have thirty (30) days after receiving notification of the removal order to depart from the United States. Unless the public safety otherwise requires, the Commissioner of Immigration and Naturalization is authorized to release such alien enemy from internment under appropriate parole

safeguards in order that the alien enemy may settle his personal and business affairs, provide for the recovery, disposal, and removal of his goods and effects, and make arrangements to depart from the United States.

§ 30.75 *Involuntary removal from the United States.*—In the event that an alien enemy, who is the subject of a removal order, fails or neglects to depart from the United States within the above-mentioned thirty-day period, the Commissioner of Immigration and Naturalization will take the alien enemy into custody and will provide for his removal to the territory of the country of which he is a native, citizen, denizen or subject, as soon as transportation is available.

Approved: September 26, 1945.

TOM CLARK, *Attorney General.*

(F.R. Doc. 45-18005; Filed Sept. 27, 1945: 10:11 A.M.)

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